

**NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.**
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

JUL 29 2011

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2010-0320
)	DEPARTMENT B
Appellee,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
LORENZO REYES FELIX,)	the Supreme Court
)	
Appellant.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20084461

Honorable Howard Fell, Judge Pro Tempore

AFFIRMED

Thomas C. Horne, Arizona Attorney General
By Kent E. Cattani and Amy M. Thorson

Tucson
Attorneys for Appellee

Isabel G. Garcia, Pima County Legal Defender
By Alex Heveri

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ESPINOSA, Judge.

¶1 After a jury trial, Lorenzo Felix was convicted of first-degree burglary, kidnapping, aggravated assault, armed robbery, sexual abuse, sexual assault, theft of means of transportation, first-degree trafficking in stolen property, and theft of a credit card. The trial court found Felix previously had been convicted of felonies, one of which was a violent offense, and sentenced him to a combination of consecutive and concurrent, aggravated and enhanced prison terms, the longest of which were fifteen years. On appeal Felix contends he was incompetent to stand trial and the court erred when it failed to have him reexamined before sentencing pursuant to Rule 11, Ariz. R. Crim. P. We affirm.

¶2 Before trial, the court granted defense counsel's request that Felix be examined pursuant to Rule 11. In February and March 2009, psychiatrist Barry Morenz, M.D., and psychologist Daniel Overbeck, Ph.D., evaluated Felix and concluded he was not competent to stand trial. After a hearing at the end of March 2009, the court agreed and committed him to the Pima County Restoration to Competency Program (PCRCP) for treatment designed to restore his competency. In April 2009, Dr. Michael Christiansen, who had monitored Felix's treatment at PCRCP, reported that Felix had not been restored to competency and requested an additional thirty days to treat him, which the court granted after a status hearing. But in June 2009, Christiansen reported Felix was competent to stand trial and was feigning psychiatric disorders. Counsel for the parties stipulated that the determination of Felix's competency could be submitted to the court based on psychiatric, psychological, and other reports. Following a hearing, the court found Felix competent to stand trial.

¶3 After the jury trial, Felix filed a motion for new trial pursuant to Rule 24.1(c), contending in a supplement filed shortly thereafter that he had not been competent at the time of trial and requesting that he be reexamined pursuant to Rule 11. The court denied the motion, following a hearing, and Felix filed a motion for reconsideration, which the court also denied. Felix contends on appeal that he had not been competent at the time of trial and argues the court erred by not having him reexamined and in denying his request for a new trial.

¶4 As the state points out, the motion for new trial, which was filed on July 30, 2010, following the July 16 jury verdicts, was filed outside the ten-day period prescribed by Rule 24.1(b) and was, therefore, untimely. *See* Ariz. R. Crim. P. 1.3(a) (computation of time periods prescribed by criminal rules). The trial court therefore lacked jurisdiction to rule on the motion. *See State v. Hickie*, 129 Ariz. 330, 332, 631 P.2d 112, 114 (1981). And because the trial judge lacked jurisdiction to address the motion, we will not address the propriety of the court's ruling on appeal. *See State v. Wagstaff*, 161 Ariz. 66, 70-71, 775 P.2d 1130, 1134-35 (App. 1988), *modified on other grounds*, 164 Ariz. 485, 794 P.2d 118 (1990). Although we will not address the issues Felix raises insofar as he is challenging the denial of his request for a new trial, we will address his independent claim that the court erred by denying his request for a competency examination before sentencing pursuant to Rule 11 and the related claim that the convictions were obtained in violation of his due process rights because he had been incompetent at the time of trial.

¶5 The test for determining a criminal defendant’s competency to stand trial is whether the defendant “has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding—and whether he has a rational as well as factual understanding of the proceedings against him.” *Dusky v. United States*, 362 U.S. 402, 402 (1960). A defendant is not competent if the evidence establishes he suffers from a mental illness that renders him “unable to understand the proceedings against him or her or to assist in his or her own defense.” Ariz. R. Crim. P. 11.1; *see also State v. Moody*, 208 Ariz. 424, ¶ 56, 94 P.3d 1119, 1139 (2004). A defendant has a right to a mental examination and hearing on his competency to stand trial when “reasonable grounds for an examination exist.” Ariz. R. Crim. P. 11.3(a). Similarly, in order to grant another competency hearing after one has already been conducted, the trial court must find “some reasonable ground to justify another hearing on facts not previously presented to the trial court.” *See State v. Contreras*, 112 Ariz. 358, 360-61, 542 P.2d 17, 19-20 (1975); *see also Moody*, 208 Ariz. 424, ¶ 48, 94 P.2d at 1138.

¶6 It is for the trial court to determine, in the exercise of its discretion, whether a defendant is competent to stand trial, and we will not disturb its determination absent a clear abuse of that discretion. *State v. Glassel*, 211 Ariz. 33, ¶ 27, 116 P.3d 1193, 1204 (2005). Stated differently, so long as there is reasonable evidence in the record to support the court’s rulings on the defendant’s competency, we will sustain those rulings. *See id.* Similarly, we review for an abuse of discretion a trial court’s determination that a defendant has been restored to competency and its denial of a request for a subsequent examination. *See State v. Lynch*, 225 Ariz. 27, ¶ 16, 234 P.3d 595, 601 (2010). Felix

asserts that, based on his “initial reports and counsel’s avowal, it was clear ” he was not able to assist counsel in conducting his defense. He contends “[w]hen he was physically in court, his ‘absence’ was manifested in confused and disorientated behaviors,” adding, “[t]o the extent that the eventual report found him legally competent, the report failed to address the ‘rationally assist counsel’ prong and failed to specifically address [his] ability to participate at trial in his own defense.”

¶7 In his opening brief, Felix asks that we “consider the overwhelming record, which supports his claim that [he] suffered from a psychotic disorder before and during trial that rendered him incompetent to stand trial and also rendered him incompetent to be sentenced.” To the extent he is asking us to do so, we will not reweigh the evidence. *See State v. Arnoldi*, 176 Ariz. 236, 239, 860 P.2d 503, 506 (App. 1993). “The trial court has broad discretion in considering all available information when determining the need for an additional competency examination.” *State v. Amaya-Ruiz*, 166 Ariz. 152, 163, 800 P.2d 1260, 1271 (1990). Among the kinds of information it may consider are its own perceptions and observations and information that had been before it at previous competency hearings. *Moody*, 208 Ariz. 424, ¶ 48, 94 P.3d at 1138; *see also Amaya-Ruiz*, 166 Ariz. at 163, 800 P.2d at 1271. It is for the trial court, not this court, to weigh all of the relevant factors, including the avowals of counsel, which may not be consistent with the court’s own observations or those of a mental health expert.

¶8 Given the record before us, we cannot say the trial court abused its discretion when it concluded no further Rule 11 evaluations were necessary and rejected Felix’s argument that he was not competent and had not been competent at the time of

trial. Among the reports available to the court was the final competency report of Dr. Christiansen. In his thorough, detailed, eighteen-page report, Christiansen stated he had reviewed various reports and other documents, including the Rule 11 evaluations by Overbeck and Morenz, which he summarized, and certain medical records, including hospital records relating to Felix's hospitalization the last week of March 2008. Clearly, Christiansen had spent a significant amount of time observing and evaluating Felix during his commitment. Christiansen noted with great specificity the numerous inconsistencies that existed between representations Felix had made about his own compromised intellectual capacity and Felix's other statements or conduct, as well as information about Felix from various other sources. Christiansen concluded Felix was feigning psychiatric disorders, and the trial court reasonably could rely on that assessment.

¶9 Among the inconsistencies Christiansen noted was that Felix insisted he was unable to "hold a job," yet in a motion to modify release conditions he had asserted he was employed by his brother in his construction company and had worked there for nine years in a supervisory position. Similarly, Christiansen pointed out that Felix claimed he did not understand legal proceedings or the nature of the offenses he had been accused of committing and made comments suggesting he was intellectually compromised. But other documents describing him and his behavior suggested the contrary was true. Christiansen also noted Felix had complained he suffered from symptoms that did not correlate with "any known mental defect, disease, or disability."

¶10 Christiansen found Felix was exaggerating his “deficits and symptoms,” and that his

overall performance on psychological tests indicates an intentional effort to deceive and manipulate the evaluative outcome. Feigning of deficits in factual understanding is supported by the defendant’s presentation as lacking a factual understanding of concepts less sophisticated than legal concepts [of which] he clearly evidenced understanding in phone calls during the initial weeks of his detainment (such as most recently reporting lack of understanding regarding the concept of outcomes of guilty versus not guilty).

Christiansen concluded Felix was competent to stand trial, having “demonstrated the capacity to understand the nature and the objectives of the proceedings against him and to communicate rationally with and assist his counsel in the preparation and presentation of his defense.”

¶11 The trial court clearly considered Christiansen’s report and the reports of previous evaluations of Felix by Christiansen, Overbeck, and Morenz. At the hearing on Felix’s motion, the court also noted it had reviewed a letter Felix had sent to the court after the verdict was entered, commenting “based on what he wrote, it’s clear to me that there is no issue about his competency. He cites a number of issues that he suggested . . . he would have liked dealt with at the trial, he cites cases, so forth.” Felix had been before the court numerous times for extended periods of time, particularly during the four-day jury trial, giving the court ample opportunity to observe him and draw its own conclusions about his mental status. The record contains more than sufficient evidence to support the court’s ruling, and it does not support Felix’s argument that his due process rights were violated because he had been incompetent at the time of trial and sentencing.

¶12 Finally, we summarily reject Felix’s contention that the trial court did not consider or give adequate weight to his ability to assist counsel in his defense, one of the elements of the test for competency. “We presume that a court is aware of the relevant law and applies it correctly in arriving at its ruling.” *Moody*, 208 Ariz. 424, ¶ 49, 94 P.3d at 1138. Additionally, also contrary to Felix’s assertions, Christiansen specifically addressed this aspect of the competency evaluation and it is clear the court reviewed the report. The argument is meritless.

¶13 The convictions and the sentences imposed are affirmed.

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge

CONCURRING:

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge